REMARKS

Claims 59-65, 67-78, and 80-83 are pending in this application, with claims 59 and 72 being independent.

Claims 59-65, 67-78, and 80-83 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication US 2005/0086052 to Shih.

As an initial matter, it is noted that Shih does not qualify as prior art against the present application under 35 U.S.C. § 102(e) (or, indeed, under any other provision of 35 U.S.C. § 102).

35 U.S.C. § 102(e) provides that a person shall be entitled to a patent unless:

> ...the invention was described in - (1) an application for patent, published under section 122(b), by another <u>filed in the United States before the invention by the applicant for patent</u> or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language... (Emphasis added.)

Shih was filed in the United States on October 16, 2003. The present application is a National Stage filing under 35 U.S.C. § 371 of International Application No. PCT/SG03/00232 filed on September 25, 2003. Accordingly, the effective date of the present application[1] is September 25, 2003, which is <u>before</u> the filing date of Shih. Accordingly, Shih does not qualify as prior art against the present application under 35 U.S.C. § 102(e). For this reason alone, the rejection of the claims of the present application under 35 U.S.C. § 102(e) over Shih should be withdrawn.

Applicants submit that the claimed invention is patentable over what is disclosed in

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[1]See 35 U.S.C. § 363

Shih in any event. Along those lines, Applicants offer the following remarks to aid in the Examiner's understanding of the claimed invention.

In the *Response to Arguments* section of the Office Action, i.e., paragraphs 13 and 14, the Examiner indicates that he has fully considered Applicants' response filed on September 15, 2008, but that he has found it not persuasive. The Examiner proceeds to assert that "the Applicant's specification (see pages 10 and 12) defines a gradient-based processing as merely a segmentation process, used to search for notes within voice portions, while further used to search and extract note markers." (See page 5 of the Office Action.)

Applicants very strongly disagree with this line of argument set forth by the Examiner, for a number reasons, as outlined below.

First and foremost, the sections on pages 10 and 12 of the Applicants' specification which refer to gradient-based segmentation are the following:

• Page 10, lines 3-5: "In this invention, a gradient-based segmentation method is employed to search for notes within the voice portions, thus not relying so much on silence discrimination."

• Page 10, lines 14-15: "The gradient-based segmentation is derived from these unique properties to extract the note markers."

• Page 12, lines 3-6: "The selection of the advanced mode activates the gradient-based segmentation step 303. This step is made up of the processes conducted in the gradient based segmentation unit 206 of Figure 2. Thus the process 303 searches for note markers within each voiced waveform."

Therefore, while there is a functional description of what "gradient-based processing" is used for in those portions of the specification, clearly, those portions do not define the feature of gradient-based segmentation, as claimed in, e.g., claim 59 as amended in the

previous response.

Rather, and as is unambiguously clear to a person skilled in the art, the critical aspect of the feature "gradient based segmentation" is that it defines the use of differentiation, (i.e., forming a gradient).

Therefore, claim 59 is limited to a processing which includes at least a differentiation step, i.e., it is far from simply defining "any segmentation process, used to search for notes within voice portions, while further used to search and extract note markers."
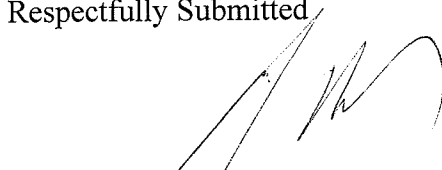
With reference to the specification as filed, the specification does indeed include an entire section entitled "Gradient Based Segmentation," starting on page 14, line 17, to page 15, line 2, and with reference to Figures 5A to E. Clearly, it is that part of the patent specification, if any, which provides the definition of gradient-based segmentation, including the differentiation step 502 "to produce a gradient function" (see page 14, lines 25-26).

Having thus shown that the Examiner has incorrectly interpreted at least the feature of "gradient-based processing," and with reference to paragraphs 1 to 12 of the Office Action, where the Examiner has failed to show that the cited prior art contains any disclosure or suggestion of using at least a differentiation step in the segmentation processing, i.e. gradient-based processing, Applicants respectfully submit that the objections to claims 59-65, 67-78, and 80-83 cannot be maintained and should be withdrawn for at least this reason as well.

Reference is also made to the arguments presented in Applicants' previous response, which further highlight that the cited prior art (Shih) fails to disclose or suggest at least the step of applying a gradient based processing to the segments for dividing each voice segment into one or more notes, as defined in for example amended claim 59 filed in the previous response.

In view of the foregoing amendments and remarks, Applicants respectfully request

favorable reconsideration and early passage to issue of the present application.

Respectfully Submitted,

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